UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WORLDWIDE FUNITD and

WORLDWIDE FUN LTD., and SMILING ALBINO LTD.,

DOC NO.: 1:17-CV-3418

Plaintiffs,

AFFIDAVIT OF DANIEL FRASER

-against-

SANUK ENTERPRISES, INC., KENNETH FISH d/b/a ABSOLUTE TRAVEL, and GUY CHIRICO,

:

Defendants.

Daniel Fraser, duly affirms, declares and says:

1. I am an owner of Worldwide Fun Ltd. and Smiling Albino Ltd. (collectively "Smiling Albino"), Plaintiffs in the above captioned action. I submit this affidavit in reply to Defendant Kenneth Fish's ("Fish") opposition to Smiling Albino's Motion for Partial Summary Judgment.

- 2. As reflected in the invoices attached to Smiling Albino's motion, Smiling Albino was providing services to the clients of Defendants Sanuk Enterprises, Inc. d/b/a Absolute Travel ("Sanuk") and Fish as late as March 10, 2017. Exh. E to Fraser Aff.
- 3. Based on the agreement between Smiling Albino and Sanuk and Fish, Exh. D to Fraser Aff., Sanuk and Fish had already been paid by their clients and were required to later remit payment to Smiling Albino.
- 4. During this time, when Sanuk and Fish were supposed to pay Smiling Albino with the funds they had already received from their clients, Fish was writing checks for tens of thousands of dollars to himself and to cash as late as February 27, 2017. Exh. J to Fraser Aff.

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- 5. Fish's claim that the "seasonal" aspect of travel affected Sanuk's cash-flow and payments to Smiling Albino is false. Sanuk was required Sanuk to pay Smiling Albino within two weeks of receipt of an invoice. Exh. D to Fraser Aff.
- 6. Furthermore, during the "high season" between November and April, when clients are traveling more frequently to Southeast Asia, Sanuk would have been the most cash-positive because <u>Sanuk was paid in full by its clients</u> before its clients left the United States, yet Sanuk still would not pay Smiling Albino per the agreement.
- 7. Smiling Albino would not have continued to do business with Sanuk and Fish if not for Fish's repeated false statements, continuing as late as March 13, 2017, that Sanuk and Fish not only could pay the outstanding invoices to Smiling Albino, but that it would do so through July 30, 2017.
- 8. In Fish's email to me on January 26, 2017, with the payment plan Fish proposed, Fish stated that "I know that it is a plan that we can make work with certainty," despite his personal knowledge that Sanuk was completely illiquid, could not pay its own employees, and nearly defunct. *Id*.
- 9. In Fish's email to me on March 13, 2017, Fish was still promising to make a "substantial interim payment to Smiling Albino." *Id*.
- 10. In doing so, Fish used his admitted complete domination and control of Sanuk to commit a wrong and harm Smiling Albino.
- 11. My email to Fish on November 17, 2016, merely confirms that I wanted Smiling Albino to be paid for the hundreds of thousands of dollars in outstanding invoices that Sanuk and Fish failed to pay.

11. My email to Fish on November 17, 2016, merely confirms that I wanted Smiling

Albino to be paid for the hundreds of thousands of dollars in outstanding invoices that Sanuk and

Fish failed to pay.

12. As stated in the affidavits of Leslie Overton and Sasha Lehman, Sanuk stopped

paying its employees in March 2017.

13. Fish alone ran Sanuk into the ground. His employees had every reason to quit

when they learned not only were they not being paid for their work at Sanuk, but travel agencies

including Smiling Albino were also not being paid and Sanuk's clients were arriving at their

travel destinations without the reservations they paid for.

14. Fish's argument that Sanuk would have survived but for the employees quitting is

nonsense. Employees refusing to work for free has no connection to paying old invoices with

funds that Sanuk already received.

I declare under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct.

Executed on March _______, 2018.

DANIEL FRASER

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